

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

GREGORY BLACKWELL,)
)
Plaintiff,)
)
)
v.) 1:10CV288
)
UNITED STATES OF AMERICA,)
)
Defendant(s).)

ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff, a federal prisoner, has submitted a motion for return of property pursuant to Fed. R. Crim. P. 41(g). Such a motion filed after the completion of criminal proceedings is a civil action subject to the fee provisions of 28 U.S.C. § 1915. *See United States v. Jones*, 215 F.3d 467 (4th Cir. 2000). Plaintiff has not submitted the \$350.00 filing fee, but has filed an application to proceed *in forma pauperis*. Unfortunately, he has not completed that form so that an *in forma pauperis* determination can be made or so that an initial partial payment can be calculated. Plaintiff must complete the portions of the form where he is asked to state the amount of funds that have been deposited into his prison account in the last six months and must give the current balance of that account. He has not done so in his present application. This motion should, therefore, be dismissed without prejudice to Plaintiff

submitting his action on the proper forms along with either the \$350.00 filing fee or a completed application to proceed *in forma pauperis*. To assist Plaintiff, the Clerk will send Plaintiff the Motion for Return of Property forms, instructions and an application to proceed *in forma pauperis*.

In forma pauperis status is granted for the sole purpose of entering this Order and Recommendation.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order. The Clerk is instructed to send Plaintiff Motion for Return of Property forms, instructions, an application to proceed *in forma pauperis*, and a copy of pertinent parts of Fed. R. Civ. P. 8 (*i.e.* Sections (a) & (d)).

IT IS RECOMMENDED that this action be filed and dismissed *sua sponte* without prejudice to Plaintiff filing a civil complaint, on the proper Motion for Return of Property forms, which corrects the defects cited above.

/s/ P. Trevor Sharp
United States Magistrate Judge

Date: April 22, 2010